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18 *Attorneys for Defendants / Counter-Plaintiffs*
19 *IMPOSSIBLE LLC and JOEL RUNYON*

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IMPOSSIBLE FOODS INC.,
Plaintiff / Counter-Defendant,
v.
IMPOSSIBLE LLC and JOEL RUNYON,
Defendants / Counter- Plaintiffs.

Case No. 5:21-cv-02419-BLF (SVK)

DEFENDANTS / COUNTER-PLAINTIFFS
IMPOSSIBLE LLC'S AND JOEL
RUNYON'S RESPONSE TO
PLAINTIFF/COUNTER-DEFENDANT'S
THIRD MOTION FOR LEAVE TO
AMEND COMPLAINT (DKT 137)

Judge: Hon. Beth Labson Freeman
Date: May 8, 2025
Time: 9:00 AM PST

1 Defendant/Counterclaim-Plaintiff Impossible LLC and Joel Runyon (together,
2 “Impossible”) respectfully respond to Plaintiff/Counterclaim-Defendant Impossible Foods Inc.’s
3 (“IFI’s”) third motion to amend its complaint (Dkt. No. 137, the “Motion”).

4 There is scant basis for IFI’s belated request to amend its claims yet again and without prior
5 notice or effort to meet and confer in contravention of established practice in this District.¹ For the
6 reasons explained below, Impossible presents only a qualified objection to the Motion – not because
7 the application demonstrates good cause (it does not), but because Impossible believes the Court
8 and parties are better served under Rule 15 by allowing litigants to finalize their claims and move
9 the case towards trial without unnecessary and wasteful motion practice.

10 As context, Impossible is a wellness company founded by Joel Runyon in 2010. For the last
11 fifteen years, Joel has continuously offered goods and services centered around his incontestable
12 IMPOSSIBLE® mark in connection with health, nutrition, diet, supplements, fitness, and
13 philanthropy. His brand is centered on things that are natural and good for humans doing hard tasks
14 – the opposite of IFI’s bioengineered, ultra-processed, and fundamentally unhealthy fake meat
15 products and offerings. As for IFI, it originally called itself something else, “Maraxi, Inc”. In 2015,
16 Maraxi’s investors searched for a new name and decided to rebrand the company as “Impossible
17 Foods”. It did so despite having actual prior written confirmation of Joel’s existing registrations
18 and uses of IMPOSSIBLE®. IFI then expanded its offerings of “IMPOSSIBLE” from burgers to
19 recipes to clothing to wellness offerings, swamping Joel’s preexisting IMPOSSIBLE® brand and
20 generating actual consumer confusion. When Joel objected and reached out to IFI to address the
21 growing confusion and to establish guardrails between the competitors, IFI rushed to preemptively
22 file this suit.

23 IFI now seeks to present its fourth set of claims, many of which are based on dubious
24 allegations that likely contravene Rule 11. The proposed amendment adds a fifth claim for “Fraud

25 ¹ See N.D. Cal. Guidelines for Professional Conduct No. 10(a) (“Before filing a motion, a lawyer
26 should engage in a good faith effort to resolve the issue.”). IFI filed its motion without prior notice
27 or seeking to confer, even though the parties’ respective counsel were communicating with each
28 other on almost a daily basis.

in the Procurement of the Incontestability Status of Trademark Reg. No. 5387588”, which IFI concedes it knew about since at least as early as July 15, 2024. (*See* Dkt. 138, Flemming Decl. ¶ 6.) IFI nonetheless omitted the cause of action from its prior proposed Second Amended Complaint, filed just eight days later, on July 23, 2024. (*See* Dkt. 92.) IFI excuses that omission by now claiming it lacked “evidence from [Impossible] showing continuous use.” (Dkt. No. 137, at 4.) This argument, however, misstates the legal standard and ignores that the only additional evidence furnished by Impossible since then consists of **additional** incontrovertible evidence of use in the intervening months. And, obviously, Impossible has not “intentionally” abandoned the mark – instead it is abundantly using its IMPOSSIBLE® marks in the market and defending them in this Court. *See Electro Source, LLC v. Brandess-Kalt-Aetna Grp., Inc.*, 458 F.3d 931, 937-38 (9th Cir. 2006) (abandonment is not a technical foot-fault exercise, rather “abandonment requires an intent not to resume trademark use” and “*complete* cessation or discontinuance of trademark use”). Nor is there any evidence that Impossible intended to defraud the United States Patent and Trademark Office (“PTO”) – in fact, Impossible’s proper amendment of its prior registration to refine the goods and services at issue shows exactly the opposite. *See OTR Wheel Eng’g, Inc. v. W. Worldwide Servs., Inc.*, 897 F.3d 1008, 1019 (9th Cir. 2018) (requiring evidence of actual intent to defraud); *BBK Tobacco & Foods LLP v. Skunk Inc.*, No. CV-18-02332-PHX-JAT, 2019 WL 6065898, at *3 (D. Ariz. Nov. 15, 2019) (amendment of trademark application before PTO was evidence of defendant’s intent **not** to deceive). Other infirmities also exist, such as that IFI’s requested relief (to cancel the mark where multiple uses are at issue) is not legally cognizable. *See In re Bose Corp.*, 580 F.3d 1240, 1247 (Fed. Cir. 2009) (where mark used in connection with some (but not all) categories of goods listed, “it is in the public interest to maintain registrations of technically good trademarks on the register so long as they are still in use.”).

In sum, IFI has not demonstrated good cause to amend its pleading for a third time. Despite that, Impossible acknowledges that the liberal pleading standard and the judicial preference for resolution on the merits both weigh in favor of addressing these issues through dispositive motion practice.

1 Accordingly, to avoid burden on the parties and this Court, Impossible's undersigned
 2 counsel respectfully suggests that the Court exercise its inherent equitable powers to afford both
 3 sides a final opportunity to amend their pleadings on or before February 24, 2025, after which point
 4 no further amendments would be allowed.² This is precisely what the undersigned counsel
 5 proposed to IFI's counsel after reviewing the Motion and seeking to avoid unnecessary judicial and
 6 party burden. IFI's counsel demurred. In the alternative, if no such mutual extension is granted,
 7 IFI's Motion should be denied for lack of good cause shown and failing to adhere to the standards
 8 of professional practice in this District.

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 10 Dated: February 14, 2025

Respectfully submitted,
 BRAUNHAGEY & BORDEN LLP

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 13 By: s/ J. Noah Hagey
 J. Noah Hagey

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 15 *Attorneys for Defendants / Counter-Plaintiffs*
 16 *Impossible LLC and Joel Runyon*

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 26 ² Impossible is considering filing an additional claim that might be necessitated by evolving
 27 circumstances in the last year since this matter was remanded from the United States Court for the
 28 Ninth Circuit. If Impossible decides to pursue that claim, it will file prior to February 25, 2025.
 Any such claim would not expand the scope of discovery or otherwise delay the case.